

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

Editor's Note: The following Notice of Final Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 at 15 A.A.R. 1942, November 20, 2009.) The Governor's Office authorized the notice to proceed through the rulemaking process on September 16, 2009.

[R10-102]

PREAMBLE

1. Sections Affected

R9-22-711

Rulemaking Action

Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 36-2903.01(B)(7)

Implementing statute: A.R.S. § 36-2903.01(D)(4)

3. The effective date of the rules:

The rules are effective October 1, 2010, which is more than 60 days after the filing of the rule with the Secretary of State. AHCCCS Administration determined that good cause exists for and the public interest will not be harmed by the later effective date. The effective date will coincide with the providers' and health plans' contract year.

4. A list of all previous notices appearing in the Register addressing the final rules:

Notice of Rulemaking Docket Opening: 16 A.A.R. 568, April 9, 2010

Notice of Proposed Rulemaking: 16 A.A.R. 592, April 16, 2010

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

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6. An explanation of the rule, including the agency's reasons for initiating the rule:

The Deficit Reduction Act (DRA) created section 1916A of Title XIX (42 U.S.C. 1396o-1), which permits states to impose higher than nominal copayments on certain populations with incomes over 100% of the Federal Poverty Level (FPL). The AHCCCS Administration plans to move forward using this authority to change the copayment requirements for those members under the Transitional Medical Assistance (TMA) program. TMA provides continued coverage to families with children who were receiving AHCCCS in the "1931" category and become ineligible due to the increased earnings of a parent or specified relative. This category is named after the section 1931 of the Social Security Act. Persons in the TMA program have income over 100% of the Federal Poverty Level. The AHCCCS Administration plans to make other changes required to conform to Section 1916A of Title XIX, such as copayment changes as allowed for the optional copayment group.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The AHCCCS Administration conducted internal analysis of the capped fee-for-service payment amounts associated with the services subject to copayments under this rule. The Administration is relying on this analysis to ensure that the copayment amounts do not exceed maximum amounts established by federal regulations in 42 CFR 447, Subpart A. The result of the analysis is available to the public on the AHCCCS Administration public web site at: <http://www.azahcccs.gov/reporting/state/proposedrules.aspx>. The capped fee-for-service payment amounts used in the study are available for public inspection on the AHCCCS Administration public web site. However, the data underlying the study is not available to the public to the extent that the analysis relied on the use of individually identifiable protected health information, which is confidential as a matter of state and federal law.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

The copayment for non-Transitional Medical Assistance (TMA) individuals described in subsection (D) of the proposed rule, the \$1.00 nominal copayment amount currently charged will be increased as authorized by federal law. For the state fiscal year 2010, the copayment cost to these members will range from \$2.30 to \$3.40 based on the average Fee-for-Service payment. The copayments for these populations are soft copayments. Although these populations cannot be denied services if unable to pay the copayment, if 2.5% of the proposed copayments were collected, the resulting amount received would be approximately \$650,000.00. Providers are prohibited from denying services to these members if they are unable to pay the copayment. If the provider collects the copayment, then that provider's reimbursement is reduced by the copayment amount. Because historical data indicates that copayments from this population are rarely collected by the provider, increases to the current copayment amounts are not anticipated to have an impact on the provider, the member, or the Agency.

The copayments for individuals eligible for TMA (adult population) has been identified as the member population where hard copayments will be imposed for prescriptions, outpatient evaluation and management visits, outpatient therapies, and outpatient non-emergent surgeries. In October 2009, approximately 16,400 members of the 39,000 TMA members were estimated to be subject to copayments.

Beginning the state fiscal year 2010, TMA members subject to copayments will have hard copayments in the following amounts:

- \$2.30 for prescriptions;
- \$4.00 for outpatient evaluation and management services occurring in any setting other than an emergency room; and
- \$3.00 for outpatient therapy services, in-office surgeries, Ambulatory Surgical Center (ASC) surgeries, and outpatient non-emergent surgeries.

The AHCCCS Administration estimates the total annual state/federal savings from the TMA copayments to be \$300,000. For the TMA population, the provider may deny services if the copayment is not paid by the TMA member. The copayment requirements for the TMA population are delineated in subsection (E). If the provider chooses to provide the service without collecting the copayment, the provider will lose the copayment amount since this amount is deducted from the provider's reimbursement of the service.

The copayments for individuals eligible under Section 1115 Waiver, hard copayments will be imposed for prescriptions, non-emergency use of the emergency room, and physician office visits. These copayments were approved by CMS as part of the waiver for implementation of copayments, but the enforceability of this subsection of the rule was held due to a litigation matter. An injunction was recently vacated, therefore allowing the enforcement of this rule and application of the already approved copayments. The provider may also deny a service if the member does not pay the required copayment. If the provider chooses to provide the service without collecting the copayment, the provider will lose the copayment amount since this amount is deducted from the provider's reimbursement of the service.

- \$4.00 for prescriptions;
- \$30.00 for non-emergency use for the emergency room; and
- \$5.00 for physician office visits.

Currently, the AHCCCS Administration's annual budget is approximately \$9,400,000,000. The estimated total economic impact resulting from the proposed cost sharing revisions is estimated to be minimal.

- Minimal economic impact = \$0 to \$2,500,000
- Moderate economic impact = \$2,500,001 to \$250,000,000
- Substantial economic impact = \$250,000,001 and above

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

In addition to minor technical and grammatical changes, The AHCCCS Administration made the following changes after the proposed rule was filed:

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

Section 4107(c) and (d) of the Health Care Reform bill states that, effective October 1, 2010, copayments cannot be imposed on tobacco cessation treatment for pregnant women. The Administration has updated R9-22-711(A)(5) to reflect the change made in Section 4107.

In addition, the United States District Court for the District of Arizona filed an Order as of March 29, 2010 and vacated the proposed Order signed on March 26, 2010 for the case *Sharon Newton-Nations vs. Anthony Rodgers succeeded by Thomas J. Betlach*, Arizona Health Care Cost Containment (AHCCCS) Director. Therefore, the Order allows the AHCCCS Administration to impose the copayments described in R9-22-711(E) and to strike existing rule R9-22-711(G).

11. A summary of the comments made regarding the rule and the agency response to them:

The following matrix lists the public comments received from Ellen Katz, William Morris Institute for Justice as of May 18, 2010, please note that the responses and references to subsections are in reference to how the subsections existed when proposed. The final version of the language will show changes in the subsection numbering:

Item #	Rule Cite Line #	Comment From	Comment	Response
1.		Ellen Katz	The Arizona Health Care Cost Containment System (“AHCCCS”) issued a Notice of Amended Proposed Rulemaking Concerning Administrative Rule R9-22-711. This proposed rulemaking affects class members in <i>Newton-Nations v. Rodgers</i> , CIV 2003-2506 PHX EHC, as well as other low-income Arizonans. The William E. Morris Institute for Justice (“Institute”) is co-counsel for plaintiffs and the class in <i>Newton-Nations</i> .	It is inaccurate that this is an <i>amended</i> rulemaking; this is a new rulemaking under the Administrative Procedure Act (APA).
2.		Ellen Katz	AHCCCS proposed rules sometimes speak in terms of exempting individuals and at other times in terms of exempting services. This creates confusion and, in some cases, inconsistency with the federal requirements.	We disagree. While the organization of proposed rule is not identical to the federal regulation, the proposed rule includes all of the necessary content in a manner that is just as clear, if not more clear, than the federal regulation it implements. Here is a summary outline of the rule: Subsection (A): includes a description of services that are not subject to copayments under any circumstances. Subsection (B): includes a list of persons who, by virtue of their status, are not subject to copayments for any services. Subsection (C): describes copayment requirements for persons subject to “nominal” copayments under section 1916 of the Social Security Act. Subsection (D): describes copayment requirements for persons subject to alternative copayments under section 1916A of the Social Security Act. These individuals are eligible for TMA. Subsection (E): describes copayment requirements for persons subject to the copayment requirements listed in the Arizona Demonstration Project under section 1115 of the Social Security Act.
3.		Ellen Katz	Moreover, there is no place in the proposed rules where medical services that are exempt and excluded from copayments or from heightened copayments are listed.	All the medical services that are exempt by federal law are listed in this rule. Subsections (A) and (B) are applicable to both nominal and heightened copayments.

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

4.	R9-22-711(C)	Ellen Katz	The listed groups of services are exempt from nominal copayments. AHCCCS splits these services between R9-22-711(A) and (B). Then in Section 711(C) for persons for whom only nominal copayments may be charged, AHCCCS only refers to Section 711(B) and omits reference to Section 711(A). Thus, as an example, the way the proposed rule is structured, persons identified in Section C improperly could be charged copayments for an emergency.	Subsection (A) starts with “for purposes of this Article” and it applies to all other subsections within this rule. Moreover, the exemptions from copayments for services described in subsection (A)(4)-(7) – which include emergency services - clearly state that they apply to “all members.”
5.	R9-22-711(D)	Ellen Katz	For R9-22-711(D) where AHCCCS proposes to impose heightened copayments, the rule states that “[u]nless otherwise listed in other” subsections the listed copayments can be charged. As noted, pursuant to 42 U.S.C. 1396o-1(b)(3)(B), no heightened copayments may be imposed on the 10 listed services. Section D does not refer to Section A. It is not clear what services properly can be charged the heightened copayments.	Subsection (A) starts with “for purposes of this Article” and it applies to all other subsections within this rule. Moreover, the exemptions from copayments for services described in subsection (A)(4)-(7) clearly state that they apply to “all members.”
6.	R9-22-711(D)	Ellen Katz	The proposed rule allows (or is not clear that it is not allowed) family planning services to be subject to the heightened copayment in violation of federal law.	Subsection (A) starts with “for purposes of this Article” and it applies to all other subsections within this rule. This is covered under (A)(4) which states that “Family planning services and supplies are exempt from copayments for all members.”
7.	R9-22-711(E)	Ellen Katz	Section E fails to refer to all the exempt services under federal law and to the medical services listed in Section 711(A) in violation of the federal law.	Subsection (A) starts with “for purposes of this Article” and it applies to all other subsections within this rule. In addition, under the 9th Circuit Court of Appeals decision in <i>Spry v. Thompson</i> , 487 F.3d 1272 (2007), and the District Court decision in <i>Newton-Nations v. Rodgers</i> , 2010 U.S. Dist. LEXIS 29901, (2010), copayments can be imposed on expansion populations consistent with the special terms and conditions imposed by the Secretary of the U.S. Department of Health and Human Services as part of a section 1115 demonstration project. The special terms and conditions of Arizona’s approved demonstration project do not require the agency to exclude any particular services from the copayments applicable to the expansion populations described in subsection (E).
8.		Ellen Katz	We request that AHCCCS list in a comprehensive manner all exempt services and all services where non-nominal copayments may not be charged.	This is covered in subsections (A) and (B).
9.	Preamble #5 and #8	Ellen Katz	The preamble states copayments will apply to part of the TMA population but the text of the proposed rules applies to all individuals in the TMA program. <i>See</i> Section D.	There are persons in the TMA population excluded by subsection (B).

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

10.	R9-22-711(D)	Ellen Katz	<p>The proposed rules include neither an exclusion of individuals with incomes under the FPL nor a method for determining family income so that individuals in the FPL grouping will have their cost sharing limited. Section D must be clarified to only apply to TMA persons with incomes over 100% of the FPL and the rules must explain how income for this group will be determined.</p>	<p>There is no one in the TMA category who has family income under 100% of FPL. Under 42 U.S.C. 1396r-6, TMA refers to persons who lose eligibility under a Title IV-A related Medicaid category due to increased earned income. Under the Arizona State Plan, all of the Title IV-A related Medicaid categories have income limits that are higher than 100% of the FPL. See, A.A.C. R9-22-1428. Thus persons with family income at or below 100% of the FPL are not eligible under the TMA category.</p>
11.		Ellen Katz	<p>The Preamble paragraph 8 and the proposed rules allow the provider to deny services to TMA individuals who are unable to pay the copayment amounts. The Preamble refers to the federal regulations on copayments, 42 CFR 447, Subpart A.</p> <p>Those regulations require the state to specify the basis for determining whether an individual is unable to pay the charge.</p> <p>Our review of the AHCCCS web site does not disclose them.</p>	<p>Federal regulations require that the state plan describe when an individual is unable to pay a nominal copayment. Refer to Section R9-22-711(C); it is based on the member's statement that s/he is unable to pay.</p>
12.		Ellen Katz	<p>The federal regulations referred to in the Preamble also require the state to specify the procedures for implementing and enforcing the exclusions from cost sharing. 42 CFR 447.53(d)(5).</p> <p>The proposed regulations fail to do this and are thus inconsistent with the federal law.</p>	<p>Federal regulations require the description in the state plan. Under the Arizona Administrative Procedure Act, internal operations of an agency and the terms of state contracts (such as those AHCCCS has with managed care organization and providers) are not proper subjects for rulemaking. A.R.S. § 41-1005(A)(4) and (15).</p>
13.		Ellen Katz	<p>Preamble paragraph 8 states what AHCCCS anticipates the annual state and federal savings total amount to be collected.</p> <p>After returning the percentage of that amount that is due to the federal government, it appears that the state will save only about \$222,625</p> <p>Notably, federal law, 42 CFR 447.59(a), provides that no federal financial participation ("FFP") in the state's expenditures is available for "[a]ny cost sharing amount that recipients should have paid as ... copayments...." Doesn't this mean, then, that the federal government will refuse FFP in an amount that reflects the copayments that should have been paid by all AHCCCS individuals subject to copayments — in other words, whether or not the individual pays the copayment, the copayment amount should have been paid and, thus, is included into the FFP calculations?</p>	<p>That is an incorrect statement of the effect of copayments on FFP. The agency does not collect the copayment, and, therefore, does not return any amounts to the federal government. AHCCCS will not claim FFP for uncollected copayments.</p>

Notices of Final Rulemaking

14.		Ellen Katz	The exceedingly small savings obtained by charging poor people copayments, if it can even be achieved, does not appear to have been netted against the additional administrative costs that will be associated with implementing the copayments as required by federal law (as requested herein). Surely there are other, more suitable sources for these small savings (e.g., nursing homes, managed care companies, other private contractors).	AHCCCS disagrees. AHCCCS has prepared an Economic Impact Statement that addresses the estimated costs and benefits associated with this rule. For the reasons set forth in that EIS, AHCCCS believes that the probable benefits to the public outweigh the probable cost. Furthermore, that there may be other means by which AHCCCS might also achieve program savings is not in and of itself a sufficient justification for forgoing the cost savings opportunities covered by this proposed rule.
15.		Ellen Katz	The R9-22-711(A) and (B) exemptions and exclusions and R9-22-711(C) copayments also violate federal law because they require women with breast and cervical cancer who are receiving Medicaid by virtue of 42 U.S.C. 1396a(a)(10)(A)(ii)(XVIII) and 1396a(aa) to pay a copayment while federal law excludes them from this requirement. See 42 U.S.C. 1396o-1(b)(3)(B)(viii).	Only persons in the TMA category are subject to heightened copayments. Women eligible for the Breast and Cervical cancer treatment program with income at or below 100% of the FPL are not in the TMA category.
16.		Ellen Katz	The exemption for an institutionalized person under R9-22-216 only covers persons in nursing facilities and home and community based services and alternatives. This exemption is not as comprehensive as inpatients covered by 42 U.S.C. 1396o-1(b)(3)(B)(v), including patients in the listed facilities “or other medical institution.”	The federal requirement only applies to persons in institutions who, as a condition of eligibility, are required to “to spend for costs of medical care all but a minimal amount of the individual’s income required for personal needs.” In Arizona, this is referred to as the “share of cost.” The only populations that are subject to the share of cost requirements are persons in ALTCS. Those persons are exempt from all copayments under subsection (B)(3) of the proposed rule.
17.	R9-22-711(B)	Ellen Katz	The exemption for disabled children under 42 U.S.C. 1396o-1(b)(3)(B)(ix) is broader than the subsections for children with disabilities in R9-22-711(B)(2) and (6) unless it is made clear that Section B(1) includes all medical services to all children.	42 U.S.C. 1396o-1(b)(3)(B)(ix) references an optional eligibility group – certain disabled children described in 42 U.S.C. 1396a(a)(10)(A)(ii)(XIX) and (cc) – that is not covered under Arizona’s State Plan. Therefore, it is not necessary to include in this proposed rule any federal exemption from copayments that relate to this group.

Notices of Final Rulemaking

18.		Ellen Katz	<p>Under federal law, no cost sharing may be imposed on individuals to whom welfare services are provided because the child is in foster care and individuals who receive adoption or foster care assistance. 42 U.S.C. 1396o-1(b)(3)(B)(i). These persons are not listed as exempt in Section B.</p> <p>R9-22-711(C) refers to “[a]n individual eligible for State Adoption Assistance in R9-22-1426 as a person who can be charged copayments. R9-22-1426 applies to exemptions from sponsored deemed income. Thus, that reference is incorrect. R9-22-1433 refers to “Special Groups for Children.” That Section only refers to children eligible for Title IV-E adoption subsidy or children eligible for state adoption subsidy under 42 CFR 435.227. The exemption in 42 U.S.C. 1396o-1(b)(3)(B)(i) is far broader and includes children in foster care.</p>	<p>The reference to R9-22-1426 is incorrect and will be changed to R9-22-1433. Subsections (C) and (D) provide for exceptions in federal law. Specific to this comment, 42 U.S.C. 1396o-1(b)(3)(B)(i) prohibits the imposition of alternative (i.e., higher than nominal) copayments on children under age 18 whose eligibility is based upon the receipt of child welfare services under Title IV-B or foster care or adoption assistance payments. Subsections (D)(3) and (4) exempt those children from the higher copayments in subsection (D) of the proposed rule. Technically, subsection (D)(4) is redundant because: (1) only persons in the TMA eligibility group are subject to heightened copayments. No one who is eligible by virtue of the receipt of foster care, or adoption assistance payments is included in the TMA eligibility group; and (2) all children under the age of 19 are exempt from copayment under subsection (B)(1) of the proposed rule. Also, to the extent that there may be individuals 19 years of age and older whose eligibility is based upon receipt of foster care or adoption assistance payments or receipt of child welfare services under Title IV-B, Subsections (D)(3) and (4) exclude those persons from alternative copayments, and subsection (D)(5) clarifies that they are subject to nominal copayments under subsection (C). However, for purposes of clarity, the exceptions in subsections (D)(3) and (4) are being moved to the list of individuals subject to the copayments described in subsection (C).</p>
19.		Ellen Katz	<p>All the copayments in Section C must fall within the limits set by federal law. The revised copayment amount of \$3.40 proposed in R9-22-711(C)(8)(b) exceeds the maximums currently allowed by federal regulation. The federal regulation caps copayments at \$3.00 for services for which the state pays \$50.01 or more. 42 CFR 447.54(a)(3). The revised copayment amount of \$3.40 would violate this regulation.</p>	<p>Effective 07/01/10 maximum copayment allowed by federal law for such services will be \$3.40. See 73 <i>Federal Register</i> 71828 (Nov. 25, 2008).</p>

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

20.		Ellen Katz	<p>Proposed rule, R9-22-711(C)(8)(a), increases copayments for prescription drugs, and subsection (8)(c) increases copayments for physical and other therapies.</p> <p>We were promptly supplied the web site link by counsel for the state; however, the link did not provide access to information concerning the AHCCCS analysis and about the fee-for service amounts that were used to arrive at the proposed copayment amounts for prescription drugs or physical and other therapies.</p> <p>The public had no way to verify whether the copayment amounts reflect the maximums.</p>	<p>A.A.C. R1-1-501(6) requires the notice of proposed rulemaking to include “a reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material.” The agency is in compliance with that requirement to the extent not inconsistent with federal law. Information regarding increases in copayment amounts for populations other than the TMA population were posted on the agency’s web site (as stated in the notice of proposed rulemaking) at http://azahcccs.gov/reporting/state/proposedrules.aspx on April 12, 2010. The underlying data on which the analysis was based is protected health information and cannot be made public under 45 CFR 164.</p>
21.		Ellen Katz	<p>For the proposed amended rulemaking, AHCCCS only provided data analysis for the TMA eligible persons. The data shows Rx costs for group averaged \$34.76, therefore, the \$2.00 copayment limit would apply.</p>	<p>See the response to comment no. 20. The information posted on the AHCCCS web site provided the data analysis for the TMA group and for persons subject to the proposed amendments to the copayment in subsection (C). The amount that currently applies to the TMA is as noted in the rule, \$2.30, which is allowed by the latest federal changes.</p>
22.		Ellen Katz	<p>The proposed copayments for TMA individuals do not exclude individuals whose family income does not exceed the FPL, as required by 42 U.S.C. 1396o-1(a)(2)(A). Thus, the proposal also fails to specify how family income will be determined, as required by 42 U.S.C. 1396o-1(b)(4).</p>	<p>There is no one in the TMA category (that is, persons subject to higher than nominal copayment amounts) that has a family income under 100% of FPL. See response to comment no. 9. The federal statutory requirement in 42 U.S.C. 1396o-1(b)(4) is that “family income shall be determined in a manner specified by the State.” It does not require that the manner be specified in state administrative rules. AHCCCS has specified the manner of calculating income for purposes of copayments in its Medicaid State Plan. The state plan specifically states that the method for determining income for purposes of copayments is identical to the method for determining income for purposes of eligibility. As the proposed rule does not identify a different method for calculating income, income for purposes of copayments is calculated as described in the existing rules applicable to the various types of eligibility. See, for example, A.A.C. R9-22-1422 and R9-22-1437.</p>

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

23.		Ellen Katz	Services furnished to children in foster care/adoption assistance and preventive services for children under age 19, will be subject to copayments in accordance with Section C. However, federal law prohibits the imposition of cost sharing on these groups. See 42 U.S.C. 1396o-1(b)(3)(B)(i), (ii) (“Subject to the succeeding provision of this section, no cost sharing shall be imposed under subsection (a) with respect to the following....”). Also, as noted above, the exclusions from the copayments for TMA persons do not include all the exempted services in the federal law.	42 U.S.C.1396o-1(b)(3)(B)(i) does not exclude foster care/adoption assistance eligible persons from all copayments, it only excludes them from the imposition of the alternative copayments described in that statute. Subsection (B)(1) excludes all children under age 19 from any copayments. To the extent that there may be individuals 19 years of age or older whose eligibility is based upon the receipt of foster care or adoption assistance payments, subsections (D)(3) and (4) exclude those persons from alternative copayments and subsection (D)(5) clarifies that they are subject to the nominal copayments in subsection (C).
24.		Ellen Katz	In Section E it refers to Section D. Is someone to understand that for those persons covered by Section E, those persons cannot be charged copayments for the medical services listed in Sections (D)(3) and (4)? The Institute doubts anyone would understand that limitation given the structure and wording of the proposed rule.	There is no one described in subsections (D)(3) and (4) (persons whose eligibility is dependent upon the receipt of child welfare assistance, foster care payments, or adoption assistance payments) who is also described in subsection (E). By excluding persons described in subsections (B), (C), and (D), subsection (E) encompasses only those persons who are considered to be in an “expansion population” under the Arizona Section 1115 demonstration project. Copayments for that population are as described in the terms and conditions of the demonstration project. For additional information, see the response to comment no. 6.
25.	R9-22-711 (H)	Ellen Katz	Proposed R9-22-711(H) sets forth an aggregate 5% family income cap; however, it would not apply this cap to individuals who are in Section E and in the <i>Newton-Nations v. Rodgers</i> class. All these persons have incomes below the FPL, with some as low as 40% of the federal poverty level.	Copayments can be imposed on expansion populations, regardless of income level, consistent with the special terms and conditions imposed by the Secretary of the U.S. Department of Health and Human Services, DHS. For additional information, see the response to comment no. 6. The special terms and conditions of Arizona’s approved demonstration project do not require the agency to impose a 5% aggregate limitation for persons in the expansion populations described in subsection (E) regardless of income level.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

Not applicable

14. Were the rules previously made as emergency rules? If so, please indicate the Register citation:

No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION**

ARTICLE 7. STANDARDS FOR PAYMENTS

Notices of Final Rulemaking

Section
R9-22-711. Copayments

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-22-711. Copayments

A. For purposes of this Article:

1. A copayment is a monetary amount that a member pays directly to a provider at the time a covered service is rendered.
2. An eligible individual is assigned to a hierarchy established in subsections (B) through (E), for the purposes of establishing a copayment amount.
3. ~~A copayment is assessed prospectively.~~ No refunds shall be made for a retroactive period if there is a change in ~~a person's~~ an individual's status ~~altering that alters~~ the amount of a copayment.
4. ~~Family planning services and supplies are exempt from copayments for all members.~~

B. The following services are exempt from AHCCCS copayments:

1. Family planning services and supplies are exempt from copayments for all members.
2. Services related to a pregnancy or any other medical condition that may complicate the pregnancy, including tobacco cessation treatment for a pregnant woman, are exempt from copayments for all members.
3. Emergency services as described in 42 CFR 447.53(b)(4) are exempt from copayments for all members.
4. All services paid on a fee-for-service basis are exempt from copayments for all members.

~~**B-C.**~~ The following individuals are exempt from all AHCCCS copayments:

1. An individual under age 19, including individuals eligible for the KidsCare Program in A.R.S. § 36-2982;
2. An individual determined to be Seriously Mentally Ill (SMI) by the Arizona Department of Health Services;
3. ~~A Native American eligible under the parent program in A.R.S. § 36-2981.01;~~
4. ~~A Native American enrolled with IHS;~~
5. ~~An eligible individual not enrolled with a contractor and classified as fee for service;~~
6. ~~A pregnant woman eligible for any AHCCCS program;~~
7. ~~An individual eligible for the family planning services program in A.R.S. § 36-2907.~~
- 8-3. An individual eligible for the Arizona ~~Long Term~~ Long-Term Care Program in A.R.S. § 36-2931;
- 9-4. An individual eligible for Medicare Cost Sharing in ~~A.R.S. § 36-2972~~ 9 A.A.C. 29; ~~and~~
- 10-5. An individual eligible for the Children's Rehabilitative Services program under A.R.S. § 36-2906(E);
- 11-6. An institutionalized person under R9-22-216; ~~and~~
7. An individual receiving hospice care as defined in 42 U.S.C. 1396d(o).

~~**C.**~~ Unless otherwise listed in subsection (B), an individual eligible for the parent program in A.R.S. § 36-2981.01 is subject to a \$1.00 per visit copayment for a nonemergency use of the emergency room. A provider shall not deny service because of the member's inability to pay a copayment.

D. Copayments for non-Transitional Medical Assistance (TMA) individuals covered under the State Plan. Unless otherwise listed in subsection (B) or (C), the following individuals under subsections (D)(1) through (8) are subject to the copayments listed in this subsection. A provider shall not deny a service because of the member's when a member states to the provider an inability to pay a copayment.

1. A family eligible under Section 1931 of the Act;
2. An individual eligible for Young Adult Transitional Insurance (YATI) in A.R.S. § 36-2901(6)(iii);
3. An individual eligible for State Adoption Assistance in ~~R9-22-1426~~ R9-22-1433;
4. An individual eligible for Supplemental Security Income (SSI);
5. An individual eligible for SSI Medical Assistance Only (SSI/MAO) in R9-22-1500;
6. ~~An individual eligible for the Transitional Medical Assistance (TMA) in A.R.S. § 36-2924;~~
- 7-6. An individual eligible for the Freedom to Work program in A.R.S. § 36-2901(6)(g); and
- 8-7. An individual eligible for the Breast and Cervical Cancer Treatment program in A.R.S. § 36-2901.05.
8. An individual with respect to whom child welfare services are made available under Part B of Title IV of the Social Security Act on the basis of being a child in foster care, without regard to age or an individual with respect to whom adoption or foster care assistance is made available under Part E of Title IV of the Social Security Act, without regard to age.
9. An individual enrolled for behavioral health services in A.R.S. § 36-2907.

Covered Services	Copayment
Physician office visit	\$1.00 per office visit
Nonemergency use of the emergency room.	\$1.00 per visit

9. Copayment amount per service:

- a. \$2.30 per prescription drug.
- b. \$3.40 per outpatient visit, excluding an emergency room visit, if any of the services rendered during the visit are coded as evaluation and management services or non-emergent surgical procedures according to the National

Notices of Final Rulemaking

Standard Code Sets. An outpatient visit includes any setting where these services are performed such as a physician's office, an Ambulatory Surgical Center (ASC), or a clinic.

- c. \$2.30 per visit, if a copayment is not being imposed under subsection (D)(9)(b) and any of the services rendered during the visit are coded as physical, occupational or speech therapy services according to the National Standard Code Sets.

E. Copayments for individuals eligible for Transitional Medical Assistance.

- 1. Unless otherwise listed in subsection (C)(1), (2), (5), (6), (7) or (D)(1) through (8), an individual eligible for Transitional Medical Assistance (TMA) in A.R.S. § 36-2924 is required to pay the following copayments:

- a. \$2.30 per prescription drug.
- b. \$4.00 per outpatient visit, excluding an emergency room visit, if any of the services rendered during the visit are coded as evaluation and management services according to the National Standard Code Sets. An outpatient visit includes any setting where these services are performed, such as a physician's office, an Ambulatory Surgical Center (ASC), or a clinic.
- c. If a copayment is not being imposed under subsection (E)(1)(b), \$3.00 per visit if any of the services rendered during the visit are coded as physical, occupational or speech therapy services according to the National Standard Code Sets.
- d. If a copayment is not being imposed under subsection (E)(1)(b) or (c), \$3.00 per visit, if any of the services rendered during the visit are coded as non-emergent surgical procedures according to the National Standard Code Sets when provided in a physician's office, an (ASC), or any other outpatient setting, excluding an emergency room, where these services are performed.

- 2. The provider may deny a service if the member does not pay the copayment required by subsection (E)(1), however, a provider may choose to reduce or waive copayments under this subsection on a case-by-case basis.

~~E.F.~~ Copayments for individuals covered under Section 1115 Waiver. Unless otherwise listed in subsection ~~(B)~~, ~~(C)~~, or ~~(D)~~ (C), (D), or (E) the following individuals are required to pay the copayments listed in this subsection. The provider may deny a service if the member does not pay the required copayment. However, a provider may choose to reduce or waive copayments under this subsection on a case-by-case basis.

- 1. An individual whose income is ~~under~~ equal to or under 100% of the Federal Poverty Level in A.R.S. § 36-2901.01, or
- 2. An individual eligible for the Medical Expense Deduction program in A.R.S. § 36-2901.04.

Covered Services	Copayment
Generic prescriptions or brand name prescriptions if generic is not available	\$4.00 per prescription <u>drug</u>
Brand name prescriptions when generic is available	\$10.00 per prescription <u>drug</u>
Nonemergency use of the emergency room.	\$30.00 per visit
Physician office visit	\$5.00 per office visit

~~F.G.~~ A provider is responsible for collecting any copayment imposed under this Section.

~~G.~~ On April 20, 2004, the United States District Court for the District of Arizona issued a preliminary injunction prohibiting enforcement of subsection (E) of this rule. For so long as the injunction is in effect, persons who would, but for the injunction, be subject to the copayment requirements and other provisions of subsection (E) shall be subject to the copayment requirements and other provisions of subsection (D).

H. The total aggregate amount of copayments under subsections (D) or (E) may not exceed 5% of the family's income as applied on a quarterly basis. The member may establish that the aggregate limit has been met on a quarterly basis by providing the Administration with records of copayments incurred during the quarter. In addition, the Administration shall also use claims and encounters information available to the Administration to establish when a member's copayment obligation has reached 5% of the family's income.

I. Reduction in payments to providers. The Administration shall reduce the payment it makes to any provider by the amount of a member's copayment obligation under subsections (E) and (F), regardless of whether the provider successfully collects the copayments described in this Section.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

Editor's Note: The following Notice of Final Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 at 15 A.A.R. 1942, November 20, 2009.) The Governor's Office authorized the notice to proceed through the rulemaking process on November 30, 2009.

[R10-103]

PREAMBLE

1. Sections Affected

R12-4-309
R12-4-318

Rulemaking Action

New Section
Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 17-102 and 17-231(A)(1), (2), and (3)

Implementing statutes: A.R.S. §§ 17-102, 17-211(E)(3) and (4), 17-231(A)(1), (2), (3) and (4), 17-231(B)(6) and (8), 17-234, 17-235, 17-236, 17-238, 17-301, 17-309, 17-331, 17-332, 17-361, 17-371 and 17-372

3. The effective date for the rules:

September 11, 2010

4. List of all previous notices appearing in the Register addressing the final rules:

Notice of Rulemaking Docket Opening: 16 A.A.R. 407, March 5, 2010

Notice of Proposed Rulemaking: 16 A.A.R. 379, March 5, 2010

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Ron Day
Address: Game and Fish Department
5000 W. Carefree Hwy.
Phoenix, AZ 85086
Telephone: (623) 236-7352
Fax: (623) 236-7929
E-mail: Rday@azgfd.gov

6. An explanation of the rules, including the agency's reasons for initiating the rulemaking:

Laws 2009, 3rd Special Session, Ch. 7, § 28(B)(3) allows an agency to pursue rulemaking to prevent a threat to the public health, peace, or safety. On November 30, the Governor's office approved the Department's request to pursue the rulemaking for R12-4-309 and R12-4-318.

The Commission proposes creating a new rule, R12-4-309 Authorization for Use of Drugs on Wildlife, to provide the Department with proactive regulatory measures designed to address issues involving the use of drugs on wildlife including, but not limited to, fertility drugs, growth hormones, and tranquilizers. Other jurisdictions within the United States, including Texas and New York, have experienced issues that negatively impacted the state's public health and wildlife and, as a result, have reactively enacted regulations addressing those issues. The Commission has determined that, in order to ensure the protection and preservation of Arizona's wildlife resources, certain criteria and standards must be achieved by anyone requesting authorization to use drugs on wildlife. The new rule provides the Department with the authority to regulate the use of drugs on wildlife by establishing an application and authorization process for allowable drug use on wildlife. In addition, the new rule is consistent with the regulatory language, addressing the use of drugs on wildlife, recommended by the Association of Fish and Wildlife Agencies.

The Commission proposes to amend R12-4-318 to allow individuals to possess a non-hunting handgun for personal protection during archery-only and muzzleloader-only seasons. Currently, individuals are not allowed to have a firearm in their immediate possession while participating in these seasons. The Department has an enforcement directive in effect that allows individuals to carry a non-hunting handgun for personal protection during archery-only and muzzleloader-only seasons. This law enforcement directive allows an activity which is contrary to rule. The amended rule clearly prescribes that a non-hunting handgun is a handgun with a barrel length of six inches or less that does not have a scope or any type of electronic sight. The Department recently received a comment from a muzzleloader asking to be allowed to carry a handgun for personal protection and the Department supports this change.

Notices of Final Rulemaking

The Commission proposes additional amendments to ensure conformity with the Arizona Administrative Procedures Act, Secretary of State, and Governor's Regulatory Review Council rulemaking format and style requirements.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

The Commission's intent in the proposed rulemaking is to promote public safety and allow the Department additional wildlife management oversight by regulating the use of drugs on animals and allowing an individual to carry a personal handgun for protection during archery-only and muzzleloader-only seasons. The Commission has determined that the benefits of the rulemaking outweigh any costs.

The Commission's proposed new rule, R12-4-309, benefits the Department by ensuring it has control over the use of drugs on wildlife. If the Commission does not establish this authority, wildlife populations may be negatively impacted by individuals who lack the knowledge and expertise to make wildlife decisions that are traditionally entrusted to the Game and Fish Commission. In addition, individuals administering improper amounts of drugs to wildlife may cause unintended mortalities to occur. If the administration of drugs on wildlife is not managed by the Department, there is a potential that drug substances could be inadvertently introduced into the environment, posing a possible risk to public health and safety.

The Commission's proposed amendments to R12-4-318 benefit the public by allowing individuals participating in archery-only or muzzleloader-only seasons to possess a non-hunting handgun for personal protection during archery and muzzleloader hunt. This activity is currently allowed by the Department under a law enforcement directive.

The Commission does not anticipate there will be a significant financial impact to individuals as a result of the new rule or the amendments proposed for R12-4-318 and the Commission holds that the benefits of the proposed rulemaking significantly outweigh any costs.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

The definition of "administer" was added to clarify the intent of the rule.

The intent of subsection (F) was to exempt persons conducting activities authorized under Article 4 from the requirements of R12-4-309. In response to a public comment asking if the rule applied to zoo license holders, R12-4-309(F) was revised to clearly state rule exemptions.

R12-4-309(G) was revised to include agents working on behalf of the Department to clarify the intent of the rule.

R12-4-309(H) was revised to clarify items the Department will take and dispose of when wildlife drugs are administered in violation of this Section and to cite additional statutory authorities.

R12-4-318(C)(8)(1) was revised to remove "shotgun shooting shot or slug" as this amendment was included in error.

In addition, minor grammatical and style corrections were made at the request of the Governor's Regulatory Review Council staff.

11. A summary of the comments made regarding the rules and the agency response to them:

Written Comment: March 13, 2010. I strongly discourage the regulation of administering of drugs to wildlife due to over-regulation of an area where very few individuals are involved. If a bear needs to be sedated quickly or shot, I prefer keeping these opportunities flexible. Remember, as a practical matter, individuals possessing a dart gun are going to be knowledgeable of its use just by possessing it. If an occasional animal dies from too much medicine, it may have happened with or without the regulations. In the past, after trapping a mountain lion and upon its release, I would have preferred to use a drug rather than a choke hold when freeing such a dangerous animal. Let people who manage from a desk fill out their own reports instead of wildlife managers and outdoorsmen.

Agency Response: The Department disagrees. If the administration of drugs on wildlife is not controlled by the Department, there is a potential that drug substances could be inadvertently introduced into the environment resulting in possible risk to public health and safety and Arizona's wildlife resources.

Written Comment: March 15, 2010. Does this rule affect individuals possessing a zoo license? I assume that it does, but the verbiage under subsection (F) could be troublesome for a zoo licensee. A veterinarian may prescribe medication for an animal that is not sick or injured. For example: when transporting a tiger, the tiger is sedated for the safety of the individuals transporting the tiger and the safety of the tiger. While the medication is administered by a veterinarian, the animals receiving the medications are not "sick" or "injured."

Notices of Final Rulemaking

Agency Response: The intent of subsection (F) is to exempt individuals possessing a zoo license and other special licenses issued by the Department from the requirements of this rule. The Department revised the language provided under subsection (F) to clearly state that zoo license holders are exempt from the rule.

Written Comment: February 4, 2010. I strongly oppose this rule. As a Federal LEO/Game Warden on Kofa NWR and environs for over 18 years, I believe allowing handguns of any caliber will give the unethical archer or muzzle-loader the opportunity to shoot a deer if he misses with his arrow or muzzleloader. Doing so is further evidence to the increasingly vocal non-hunting public that the Department is loosening longstanding policies of special hunts and associated rules/regulations to be all-inclusive at all costs. There is no evidence whatsoever to support the need for archers/muzzleloaders to have a handgun to protect themselves from other humans or wildlife. Where is the science to corroborate the "beliefs" that somehow experienced big game hunters are facing life-or-death threats by anything or any person while afield hunting?

Agency Response: The Department disagrees. The rule is amended in response to a request to carry a non-hunting handgun for personal protection during archery-only and muzzleloader-only seasons. This amendment was proposed in an earlier expired rulemaking and the Department received a number of comments in support of the rule amendment. In addition, ethical is defined as: pertaining to or dealing with morals or the principles of morality of an individual. Ethics are a personal choice. Amending a rule to allow an individual to carry a non-hunting handgun for personal protection during archery-only and muzzleloader-only seasons will not cause a person's position regarding hunting ethics to change.

Written Comment: March 13, 2010. I agree with allowing hunters to carry a non-hunting firearm. Both my daughter and wife hunt in my family and they will not go off into the field alone without such a weapon.

Agency Response: The Department appreciates your support.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Were the rules previously made as emergency rules? If so, please indicate the Register citation:

No

15. The full text of the rules follows

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

Section

R12-4-309. ~~Repealed~~ Authorization for Use of Drugs on Wildlife

R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

R12-4-309. Repealed Authorization for Use of Drugs on Wildlife

A. For the purposes of this Section:

1. "Administer" means to pursue, capture, or otherwise restrain wildlife in order to apply directly a drug to wildlife, whether by injection, inhalation, ingestion or any other means.
2. "Drug" means any chemical substance, other than food or mineral supplements, which affects the structure or biological function of any wildlife under the jurisdiction of the state.
3. "Person" means any individual, corporation, partnership, limited liability company, non-governmental organization or club, licensed animal shelter, government entity other than the Department, and any officer, employee, volunteer, member or agent of a person.

B. A person shall not administer any drug to any wildlife under the jurisdiction of the state, including but not limited to drugs used for fertility control, disease prevention or treatment, immobilization, or growth stimulation without written authorization from the Department or as otherwise provided under subsection (F).

C. A person requesting written authorization for the use of drugs on wildlife shall submit the request in writing to the Department at least 120 days before the anticipated start date of the activity and provide all of the following:

1. A plan that includes:
 - a. The purpose and need for the proposed activity;

Notices of Final Rulemaking

- b. A clear statement of the objectives; for fertility control the statement shall include the target wildlife population goals or densities and the anticipated time-frame for meeting these objectives;
- c. A description of the agent, drug, or method including federal approvals or permits obtained, as applicable, and any mandated labeling restrictions or limitations designed to reduce or minimize detrimental effects to wildlife and humans;
- d. Required approvals, including, but not limited to, any federal or state agency approvals for specific use;
- e. Citations of published scientific literature documenting field studies on the efficacy and safety for both target and non-target species, including predators, scavengers, and humans;
- f. A description of the activity area;
- g. A description of the target species population and current status;
- h. A description of the field methodology for delivery including timing, sex, and number of animals to be treated, percentage of the population to be treated, and if applicable, calculated population effect; and
- i. Short and long term monitoring and evaluation procedures.
- 2. Documentation regarding the experience and credentials of the applicant or the applicant's agents as it applies to the requested activity;
- 3. Written endorsement from the agency or institution; required when the applicant is a government agency, university, or other institution; and
- 4. Written permission from landowners or lessees in all locations where the drug will be administered.
- D.** The Department shall notify the applicant of the Department's decision to grant or deny the request within 90 days. The Department has the authority to place conditions on the written authorization regarding:
 - 1. Locations and time-frames.
 - 2. Drugs and methodology.
 - 3. Limitations.
 - 4. Reporting requirements, and
 - 5. Any other conditions deemed necessary by the Department.
- E.** A person with authorization shall:
 - 1. Carry written authorization while engaged in the activity and exhibit it upon request to any peace officer;
 - 2. Allow Department personnel to be present to monitor activities for compliance, public safety, and proper treatment of animals;
 - 3. Adhere to all drug label restrictions and precautions;
 - 4. Provide an annual and final report:
 - a. The annual report must include the number of animals treated, the level of treatment effect obtained to date, and any problems including mortalities or morbidities of target animals.
 - b. The final report must include the end results, including the number of wildlife treated and treatment effects on target and non-target wildlife, including mortalities, morbidities, and reproductive rate changes.
 - 5. Comply with all conditions and requirements set forth in the written authorization.
- F.** This Section does not prohibit the treatment of wildlife by a licensed veterinarian or holder of a special license in accordance with R12-4-407(A)(2), R12-4-407(A)(8) and R12-4-428(B)(13), activities as authorized under R12-4-418, R12-4-420, R12-4-421, and R12-4-423, an individual exempt from special licensing under R12-4-407(A)(4) and R12-4-407(A)(5), or reasonable lethal removal activities for wildlife control as authorized under A.R.S. § 17-239(A).
- G.** This Section does not limit Department employees or Department agents in the performance of their official duties related to wildlife management.
- H.** The Department shall take possession of and dispose of any remaining wildlife drugs administered in violation of this Section and any devices and paraphernalia used to administer those drugs, as authorized under A.R.S. §§ 17-211(E), 17-231(A), and 17-240(B).

R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles

- A.** No change
- B.** Methods of lawfully taking big game during seasons designated by Commission order as "special" are designated ~~in~~ under R12-4-304. "Special" seasons are open only to individuals who possess special big game license tags issued under A.R.S. § 17-346 and R12-4-120.
- C.** When designated by Commission order, the following seasons have specific requirements and lawful methods of take more restrictive than those for general and special seasons, as prescribed in this Section. While taking the species authorized by the season:
 - 1. An individual participating in a "muzzleloader" season shall not use or possess any firearm other than muzzle-loading rifles or muzzle-loading handguns, as defined ~~in~~ under R12-4-101. Individuals participating in a "muzzleloader" season may possess a non-hunting handgun for personal protection. It is unlawful to take any wildlife with this handgun while participating in a "muzzleloader" season. For the purposes of this Section, a non-hunting handgun is defined as a handgun with a barrel length of six inches or less that does not have a scope or any type of electronic sight.
 - 2. An individual participating in an "archery-only" season ~~shall~~ may only use and or possess ~~only~~ a bow and arrow as

Notices of Final Rulemaking

prescribed ~~in~~ under R12-4-304 and shall not use or possess any other weapons, including crossbows or ~~any other~~ bows with a device that holds the bow in a drawn position except as authorized ~~by~~ under R12-4-216. Individuals participating in an “archery-only” season may possess a non-hunting handgun for personal protection. It is unlawful to take any wildlife with this handgun while participating in an “archery-only” season. For the purposes of this Section, a non-hunting handgun is defined as a handgun with a barrel length of six inches or less that does not have a scope or any type of electronic sight.

3. No change
4. No change
5. No change
6. An individual participating in a “limited weapon” season may only use or possess the following methods or devices for taking wildlife, when ~~prescribed in~~ authorized under R12-4-304 as lawful for the species hunted: ~~bow and arrow; crossbow; pneumatic weapons; falconry; slingshots; any trap except foot hold steel traps; nets; hand propelled projectiles; or capture by hand~~
 - a. Any trap except foothold steel traps.
 - b. Bow and arrow.
 - c. Capture by hand.
 - d. Crossbow.
 - e. Falconry.
 - f. Hand-propelled projectiles.
 - g. Nets.
 - h. Pneumatic weapons, or
 - i. Slingshots.
7. An individual participating in a “limited weapon-shotgun” season may only use or possess the following methods or devices for taking wildlife, when ~~prescribed in~~ authorized under R12-4-304 as lawful for the species hunted: ~~shotgun shooting shot or slug; bow and arrow; crossbow; pneumatic weapons; falconry; slingshots; any trap except foot hold steel traps; nets; hand propelled projectiles; or capture by hand~~
 - a. Any trap except foothold steel traps.
 - b. Bow and arrow.
 - c. Capture by hand.
 - d. Crossbow.
 - e. Falconry.
 - f. Hand-propelled projectiles.
 - g. Nets.
 - h. Pneumatic weapons.
 - i. Shotgun shooting shot or slug, or
 - j. Slingshots.
8. An individual participating in a “limited weapon-shotgun shooting shot” season may only use or possess the following methods or devices for taking wildlife, when ~~prescribed in~~ authorized under R12-4-304 as lawful for the species hunted: ~~shotgun shooting shot; bow and arrow; crossbow; pneumatic weapons; falconry; slingshots; any trap except foot hold steel traps; nets; hand propelled projectiles; or capture by hand~~
 - a. Any trap except foothold steel traps.
 - b. Bow and arrow.
 - c. Capture by hand.
 - d. Crossbow.
 - e. Falconry.
 - f. Hand-propelled projectiles.
 - g. Nets.
 - h. Pneumatic weapons.
 - i. Shotgun shooting shot, or
 - j. Slingshots.
9. An individual participating in a “limited weapon-rimfire” season may only use or possess the following methods or devices for taking wildlife, when ~~prescribed in~~ authorized under R12-4-304 as lawful for the species hunted: ~~rifled firearms using rimfire cartridges; shotgun shooting shot or slug; bow and arrow; crossbow; pneumatic weapons; falconry; slingshots; any trap except foot hold steel traps; nets; hand propelled projectiles; or capture by hand~~
 - a. Any trap except foothold steel traps.
 - b. Bow and arrow.
 - c. Capture by hand.
 - d. Crossbow.
 - e. Falconry.

Notices of Final Rulemaking

- f. Hand-propelled projectiles.
 - g. Nets.
 - h. Pneumatic weapons.
 - i. Rifled firearms using rimfire cartridges.
 - j. Shotgun shooting shot or slug, or
 - k. Slingshots.
10. No change
11. An individual may participate in a “juniors-only hunt” up to and throughout the calendar year of the individual’s 17th birthday, provided the individual meets the requirements of prescribed under A.R.S. § 17-335.
12. No change
13. An individual participating in a “raptor capture” season shall be a falconer licensed ~~falconer~~ under R12-4-422 ~~or exempted unless exempt~~ under R12-4-407.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

Editor’s Note: The following Notice of Final Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 at 15 A.A.R. 1942, November 20, 2009.) The Governor’s Office authorized the notice to proceed through the rulemaking process on November 30, 2009.

[R10-101]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R12-4-601 | Amend |
| R12-4-610 | Amend |
| R12-4-611 | Amend |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 17-231(A)(1)
Implementing statutes: A.R.S. §§ 17-304(B), 17-452, 41-1033, and 41-1092
- 3. The effective date of the rules:**
July 13, 2010
- The Commission requests an immediate effective date. Under A.R.S. § 41-1032(A)(4), an agency may request an immediate effective date when the proposed rulemaking will provide a benefit to the public and a penalty is not associated with a violation of the rule. The Commission believes that individuals who petition the Arizona Game and Fish Commission for adoption, amendment, or repeal of a rule; individuals seeking review of an existing agency practice or policy that they allege to constitute a rule; political subdivisions of this state that submit petitions for a hearing, a review of a rule, practice, or policy, or closure of state or federal lands to hunting, fishing, trapping, or motor vehicles will benefit from a rule that provides the Department’s current mailing address.
- 4. A list of all previous notices appearing in the Register addressing the final rules:**
Notice of Rulemaking Docket Opening: 16 A.A.R. 407, March 5, 2010
Notice of Proposed Rulemaking: 16 A.A.R. 384, March 5, 2010
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|--|
| Name: | Marty Fabritz |
| Address: | Game and Fish Department
5000 W. Carefree Hwy.
Phoenix, AZ 85086 |
| Telephone: | (623) 236-7281 |
| Fax: | (623) 236-7299 |
| E-mail: | mfabritz@azgfd.gov |

Notices of Final Rulemaking

6. An explanation of the rule, including the agency's reason for initiating the rules:

Laws 2009, 3rd Special Session, Ch. 7, § 28(B)(7) allows an agency to pursue rulemaking that eliminates or replaces archaic rules. On November 30, the Governor's office approved the Department's request to pursue rulemaking for R12-4-601, R12-4-610, and R12-4-611.

Individual's submitting a petition, and the Department, are held to strict time restraints in regards to required statutory and regulatory actions. To ensure that actions requiring the submission of documents to the Department occur in a timely manner, the Commission proposes to amend R12-4-601, R12-4-610, and R12-4-611 to provide the Department's current mailing address.

The Commission proposes additional amendments to R12-4-601, R12-4-610, and R12-4-611 to ensure conformity with the Arizona Administrative Procedures Act, Secretary of State, and Governor's Regulatory Review Council rulemaking format and style requirements.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

The Department anticipates that the rulemaking will not impact state revenues or political subdivisions.

Members of private industry or the public will benefit from a rule that provides the Department's current mailing address.

The only costs the Department will incur are those costs associated with the rulemaking process. The Commission has determined that the benefits of the rulemaking outweigh any costs.

Individuals who petition the Arizona Game and Fish Commission for adoption, amendment, or repeal of a rule; individuals seeking review of an existing agency practice or policy that they allege to constitute a rule; individuals desiring a hearing; individuals seeking closure of state or federal lands to hunting, fishing, trapping, or motor vehicles; political subdivisions of this state that submit petitions; and the Department will benefit from a rule that is clear, concise, and understandable.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Minor grammatical and style corrections were made at the request of the Governor's Regulatory Review Council staff.

11. A summary of the comments made regarding the rules and the agency response to them:

No comments were received.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

None

14. Were the rules previously made as emergency rules? If so, please indicate the Register citation:

No

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

Section

R12-4-601. Petition for Rule or Review of Practice or Policy

R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles

R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

R12-4-601. Petition for Rule or Review of Practice or Policy

- A. Any individual, including any organization or agency, requesting that the Commission make, amend, or repeal a rule, shall submit a petition as prescribed ~~in~~ under this Section.
- B. Any individual, including any organization or agency, requesting that the Commission review an existing Department practice or substantive policy that the petitioner alleges to constitute a rule under A.R.S. § 41-1033, (as defined ~~in~~ under A.R.S. § 41-1001) ~~under A.R.S. § 41-1033~~, shall submit a petition as prescribed ~~in~~ under this Section.
- C. No change
- D. No change
- E. A petitioner shall submit an original and one copy of a petition to the Arizona Game and Fish Department, Director's Office, ~~2221 West Greenway Rd., Phoenix, Arizona 85023~~ 5000 W. Carefree Highway, Phoenix, AZ 85086. The Commission shall render a decision on the petition as required ~~by~~ under A.R.S. § 41-1033.
- F. Within five working days after a petition is submitted, the Director shall determine whether the petition complies with this Section.
 - 1. If the petition complies with this Section, the Director shall place the petition on a Commission open meeting agenda. The petitioner may present oral testimony at that meeting, ~~by complying with~~ as established under R12-4-603.
 - 2. No change
- G. No change
- H. No change
 - 1. No change
 - 2. No change
 - 3. No change
- I. The title of Part 2 shall be "Request for Rule" or "Request for Review," as applicable. The title shall be centered at the top of the first page of this part. Part 2 shall contain:
 - 1. No change
 - 2. If the request is for amendment of a current rule, a statement to this effect, followed by the *Arizona Administrative Code (A.A.C.)* number of the current rule proposed for amendment, the heading of the rule, the specific, clearly readable language of the rule, indicating language to be deleted with strikeouts, and language to be added with underlining;
 - 3. If the request is for repeal of a current rule, a statement to this effect, followed by the *Arizona Administrative Code (A.A.C.)* number of the rule proposed for repeal and the heading of the rule; or;
 - 4. If the request is for review of an existing agency practice or substantive policy statement that the petitioner alleges qualifies as a rule, (as defined ~~in~~ under A.R.S. § 41-1001), a statement to this effect, followed by the practice or policy number, if any, the practice or policy heading, if any, or a brief description of the practice or policy subject matter.
- J. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- K. The title of Part 4 shall be "Statutory Authority." The title shall be centered at the top of the first page of this part. In Part 4, the petitioner shall identify any statute that authorizes the Commission to make the rule, if known, or cite ~~to~~ A.R.S. § 41-1033 if the petition relates to review of an existing practice or substantive policy statement.
- L. No change
 - 1. No change
 - 2. No change
 - 3. No change

R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles

- A. ~~Any An~~ individual or agency requesting that the Commission consider closing state or federal land to hunting, fishing, or trapping as provided under ~~R12-4-110 or~~ A.R.S. § 17-304(B); or R12-4-110; or closing roads or trails on state lands as provided under R12-4-110, shall submit a petition as prescribed in this Section before the Commission will consider the request.
- B. No change
- C. No change
- D. ~~The A~~ petitioner shall ~~file~~ submit an original and one copy of the petition ~~shall be filed with~~ to the Director of the Arizona Game and Fish Department, ~~2221 West Greenway, Phoenix, Arizona 85023~~ Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086, not less than 60 calendar days before a scheduled Commission meeting to be placed on the agenda for that meeting. If the Commission receives a petition after that time it will be considered at the next regularly-

Notices of Final Rulemaking

scheduled open meeting. At any time, the petitioner may withdraw the petition or request delay to a later regularly-scheduled open meeting.

- E. Within 15 business days after the petition is filed, the Department shall determine whether the petition complies with the requirements established under A.R.S. § 17-452, R12-4-110, and this Section, ~~R12-4-110, and A.R.S. § 17-452~~. Once the Department determines that the petition meets these requirements, and if the petitioner has not agreed to an alternative solution or withdrawn the petition, the Department, in accordance with the schedule in subsection (D), shall place the petition on the agenda for the Commission's next open meeting and provide written notice to the petitioner of the date that the Commission will consider the petition.
 - 1. The petitioner may present oral testimony in support of the petition at the Commission meeting, in accordance with the provisions of ~~established under~~ R12-4-603.
 - 2. If a petition does not meet the requirements prescribed under A.R.S. § 17-452, R12-4-110, and ~~in~~ this Section, ~~R12-4-110, and A.R.S. § 17-452~~ the Department shall return one copy of the petition as filed to the petitioner with the reasons why the petition does not meet the requirements, and not place the petition on a Commission agenda.
 - 3. No change
- F. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - a. No change
 - b. No change
 - c. No change
 - 6. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - i. No change
 - ii. No change
 - 7. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - 8. No change
 - a. No change
 - b. No change

R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

- A. No change
- B. No change
- C. A petitioner shall ~~file the~~ submit an original and one copy of ~~the a~~ petition ~~with~~ to the Arizona Game and Fish Department, Director's Office, ~~2221 W. Greenway Rd., Phoenix, Arizona 85023~~ 5000 W. Carefree Highway, Phoenix, AZ 85086.
- D. No change
- E. No change
 - 1. No change
 - 2. No change
 - 3. No change
- F. No change
- G. No change
- H. No change
 - 1. No change
 - 2. No change
- I. No change
- J. No change
- K. No change
- L. No change

1. No change
2. No change

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

Editor's Note: The following Notice of Final Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 at 15 A.A.R. 1942, November 20, 2009.) The Governor's Office authorized the notice to proceed through the rulemaking process on December 1, 2009.

[R10-100]

PREAMBLE

- 1. Sections Affected**

	<u>Rulemaking Action</u>
R20-5-601	Amend
R20-5-602	Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 23-405(4)
Implementing statute: A.R.S. § 23-410
- 3. The effective date of the rules:**

September 11, 2010
- 4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 16 A.A.R. 13, January 1, 2010
Notice of Proposed Rulemaking: 16 A.A.R. 232, February 5, 2010
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	William M. Wright
Address:	Division of Occupational Safety and Health Industrial Commission of Arizona 800 W. Washington St., Suite 203 Phoenix, AZ 85007
Telephone:	(602) 542-1695
Fax:	(602) 542-1614
E-mail:	wright.william.m@dol.gov
- 6. An explanation of the rule, including the agency's reason for initiating the rule:**

In order to conform to the Federal Occupational Safety and Health Standards as required by Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requiring state administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the U.S. Department of Labor, the Industrial Commission is amending R20-5-601 and R20-5-602, incorporating by reference, amendments to 29 CFR 1910, Subpart G, I, L, Z, and amendments to 29 CFR 1926, Subpart C, D, R, Z as published in *Federal Register*; 73 FR 75568-75589, December 12, 2008, which gives clarification that the personal protective equipment and training requirements impose a compliance duty to each and every employee covered by the standards and that noncompliance may expose the employer to liability on a per-employee basis. Further, the Industrial Commission is amending R20-5-602, incorporating by reference, amendments to 29 CFR 1910 Subpart G, I, Q, as published in the *Federal Register*; 74 FR 46350- 46361, September 9, 2009, which updates OSHA Standards based on National Consensus Standards for selecting eye, face, head and foot protection.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

The Federal Occupational Safety and Health Administration have determined that these amendments will have minimal financial impact on the general industry and construction sector(s) and has determined the amendments to be economically feasible for all industries including small business. Cost and benefit analysis of these amendments is available for inspection, review, and copying at the Industrial Commission of Arizona, Division of Occupational Safety and Health, 800 W. Washington St., Phoenix, AZ 85007.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

None

11. A summary of the comments made regarding the rule and the agency response to them:

The Arizona Division of Occupational Safety and Health did not receive any written or oral comments concerning this rule.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

CFR 1926 Federal Occupational Safety and Health Standards for Construction with amendments as of December 12, 2008. This incorporation by reference will appear in A.A.C. R20-5-601.

CFR 1910 Federal Occupational Safety and Health Standards for the General Industry with Amendments as of September 9, 2009. This incorporation by reference will appear in A.A.C. R20-5-602.

14. Were the rules previously made as emergency rules? If so, please indicate the Register citation:

No

15. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Section

R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926

Each employer shall comply with the standards in the Federal Occupational Safety and Health Standards for Construction, as published in 29 CFR 1926, with amendments as of ~~November 15, 2007~~, December 12, 2008, incorporated by reference. Copies of these referenced materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to construction activity by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1926 published after ~~November 15, 2007~~, December 12, 2008.

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

Each employer shall comply with the standards in Subparts B through Z inclusive of the Federal Occupational Safety and Health Standards for General Industry, as published in 29 CFR 1910, with amendments as of ~~October 29, 2008~~, September 9, 2009, incorporated by reference. Copies of these reference materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to general industry activity by all employers, both public and private, in the state of Arizona; provided that this rule shall not apply to those conditions and practices which are the subject of rule R20-5-601. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after ~~October 29, 2008~~, September 9, 2009.